IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO. 570 OF 2007

Neelam Krishnarao Machve ... Applicant

Versus

Raghunath Vishwanath Garge & Ors. Respondents

Mr. A.B.Tajane, Advocate, for the applicant.

Ms. Karnik, Advocate, for Mr.Sachin Gite for respondent No.1.

CORAM: J.H.BHATIA,J.

DATE: 30th November,2007.

P.C.

1. Heard learned Counsel for the parties.

2. Respondent No.1, the original plaintiff, filed the suit against the defendant on several grounds. The original defendant died and his L.Rs were brought on record. They included the widow, sons and daughter of the deceased-defendant. The suit for eviction was dismissed by the trial Court giving findings on all the issues. The plaintiff preferred Civil Appeal No.473 of 2000 before the District Court, Nashik. Pending appeal, the widow of the original defendant also died and there

is evidence to show that sons of the original defendant were in service at different places and were not residing in the suit premises. However, Neelam, who was respondent No.1F in appeal and who is applicant before this Court, claimed that she was residing in the suit house. During pendency of the appeal, the original plaintiff made amendment in the plaint to the effect that respondent No.1, Neelam, was married and after marriage she was residing with her husband and she had also acquired two different properties. That amendment was allowed after hearing the parties. Respondent No.1F (present applicant) denied the allegations and also carried out amendment in the written statement. It appears that the appellate Court directed the parties to lead evidence on that point. The record also reveals that respondent No.1F made an application, Exhibit 5 before the appellate Court to frame necessary issue on this point and remand the matter to the trial Court for recording of evidence. However, that request was turned down on the ground that the appellate Court had already passed an order on Exhibit 43 that evidence be adduced before the appellate Court itself. The plaintiff examined herself, but respondent No.1F was not examined. It appears that respondent No.1F filed an application for production of documents to show that the property which was shown to have been acquired was standing in the names of different persons and she had no concern in

the said property. However, by an order dated 18.4.2007, the Adhoc Additional District Judge, Nasik, rejected the application for production of that record and thus, respondent No.1 was effectively denied the opportunity of refuting the plea taken by the plaintiff-appellant. It is material to note that even though the acquisition of alternative accommodation by respondent No.1F was a material issue, the judgment of the appellate Court does not show that such issue/point was framed and discussed. On the other hand, the appellate Court raised the following two points only :-

POINTS	FINDINGS
(1) Whether the Appellant is entitled to possession of the suit property ?	Yes
(2) Whether the Judgment and Decree passed by the Trial Court is just, proper and legal ?	Yes

With these findings, the decree was passed in favour of the plaintiff-appellant. In fact, the material issue about acquisition of alternative accommodation by respondent No.1F should have been framed and after

discussing evidence of the parties on that point, issue should have been answered. Neither the said issue was framed and answered nor the evidence was properly discussed. As pointed out above, respondent No.1 was not given sufficient opportunity to produce oral and documentary evidence. The findings of the appellate Court on the two points raised are conflicting each other. If the judgment passed by the trial Court is found to be just, proper and legal, the appeal preferred by the plaintiff himself could not have been allowed.

3. Taking into consideration the circumstances, I find that the matter needs to be remanded back to the appellate Court. The learned Counsel for both parties concede for the same.

4. In the result, the Revision Application is allowed. The impugned judgment passed by the Adhoc Additional District Judge, Nashik, is hereby set aside. Civil Appeal No.473 of 2000 is remanded back to the District Court, Nashik, with a direction to give reasonable opportunity to the parties to produce oral and documentary evidence after framing issue on the point of acquisition of alternative accommodation by respondent No.1F. The appellate Court shall, after taking evidence as led by the parties, dispose of the Appeal de novo as per law.

(J.H.BHATIA,J.)